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NO.

In The
SUPREME COURT OF THE UNITED STATES
December term, 2007

KIRK AND SUSAN WHITCOMBE
Husband and wife
Petitioners'
v.
LARRY AND SUSAN HENAK
Husband and wife
Respondent's

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Pro- Se's
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QUESTIONS PRESENTED

(1) Can federal district courts and judges dismiss federal Pro-Se Plaintiff's CR60 Motion Complaint involving civil rights issues of a state void judgment allegedly violating citizens rights on a technicality then dismiss Pro-Se's corrected CR 60 Motion after the court had already received it for not being timely filed when the Court gave no time restrictions, and there are no local court rules or Federal Court Rules of Civil procedure requiring time limitations ?

(2) Does the Rooker - Feldman Doctrine as interpreted by the Court of Appeals, recognizing federal district courts do not have jurisdiction to vacate void judgments allegedly violating citizens rights the state highest court refused to address, remedy, and finalize, because only the United States Supreme Court has jurisdiction to review state court judgments of the highest state court, or does Federal Court Rules of Civil Procedure provide the basis of jurisdiction in district courts through an independent and original action, CR60 Relief From Judgment or Order, (b) (4), (5) and (6) ?

PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear on the face of the Judgment.

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IN THE SUPREME COURT
OF
THE UNITED STATES

KIRK AND SUSAN
WHITCOMBE, et al.

Petitioners

- against -

LARRY AND SUSAN
HENAK, et al.

Respondents

OPINIONS BELOW

February 21, 2006, United States District Court of Phoenix, Arizona, filed its ORDER, dismissing Whitcombe/Plaintiff Pro-Se's, CR60 Relief From Judgment of Order (b) (4), (5) and (6) Motion filed 02/01/06, based on a local court rule technicality with permission to re - file their motion in accordance to local and federal rules. A-1

March 20, 2006, United States District Court of Phoenix, Arizona, filed its ORDER, denying Whitcombe's 02/27/2006 Motion for Reconsideration of the Court's 02/21/06 ORDER. A-2.

April 12, 2006, United States District Court of Phoenix, Arizona, filed its ORDER and JUDGMENT dismissing federal Pro-Se Plaintiff Whitcombe's independent and original action, CR60 (b) (4), (5), and (6) Motion, seeking federal relief from a state void judgment, allegedly violating citizens rights, a state's highest court refused to address, remedy or provide finality on grounds;

(1) Whitcombe's original Motion was dismissed on a "alleged" technicality,

(2) Whitcombe's corrected Motion was not re-filed timely, and

(3) the Rooker - Feldman Doctrine recognizes federal district courts do not have Federal Court Rules of Civil Procedure, CR60 Relief From Judgment or Order, (b) (4), (5) and (6), jurisdiction to review state court judgments of the highest state court. A-3,4

June 29, 2006, United States District Court of Phoenix, Arizona, filed its ORDER dismissing Whitcombe's Motion for Reconsideration and Motion to re-file their corrected CR60 Motion. A-5

September 29, 2006, United States Judicial Council For the Ninth Circuit Court, filed its ORDER AND MEMORANDUM, dismissing Whitcombe's allegations of misconduct of two federal district court judges refusal to perform their duties pursuant to Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order, (b) (4), (5) and (6). A-6

October 19, 2006, United States Court of Appeals For the Ninth Circuit, filed its ORDER denying Whitcombe's Writ of Mandamus Petition requiring the federal district court of Phoenix, Arizona perform its duties pursuant to Federal Rules of Civil Procedure, CR60(b) (4), (5) and (6). A-7

December 4, 2006, United States District Court of Phoenix, Arizona, filed its ORDER by the district court

of Phoenix, Arizona, denying Whitcombe's November 30, 2006, CR60 Motion (b) Motion seeking relief from the Courts and Judges earlier dismissal of Whitcombe's CR60 Motion seeking relief from a state void judgment, for having no effect on the void judgment. A-8

January 18, 2007, United States Judicial Counsel of the Ninth Circuit, filed its ORDER, confirming its September 29, 2006 ORDER AND MEMORANDUM. A-9

July 16, 2007, United States Court Of Appeals For the Ninth Circuit District Court, filed its MEMORANDUM, dismissing and affirming the district courts April 12, 2006 Order and Judgment. A-11

August 24, 2007, United States Court Of Appeals For the Ninth Circuit District Court, filed its ORDER, denying Whitcombe's petition for rehearing en banc. A-12

JURISDICTION

What singular jurisdiction to cite is a very convoluted problem to federal Pro-Se's Plaintiff's in this Writ of Certiorari to answer under the attending circumstances.

The Order sought to be reviewed was filed July 16, 2007.

The Order denying rehearing en banc was filed August 24, 2007.

The question of which jurisdiction this Court has is a federal question raised in the Court of Appeals For the Ninth Circuit July 16, 2006 Order sought to be reviewed, Federal Question # 2 in this Writ of Certiorari, whether jurisdiction under 28 USC Sections 1331, 1332 and 1343

cited in Pro-Se Plaintiff's Complaint filed in the Federal District Court of the fist instance or 28 U.S.C Section 1257, cited in the Court of Appeals For the Ninth Circuit, July 16, 2007 Order. Pro -s Se Plaintiff's cite the multiple jurisdictions, cited herein as jurisdictions this Court has.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. The first Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law...abridging ...the right of the people...to petition the government for redress of grievances."**

2. The First Amendment to the United States Constitution reads in relevant part; **Congress shall make no law ...abridging the freedom of speech..."**

3. The Fifth Amendment to the United States Constitution reads in relevant part: **"No person shall be ...deprived of liberty, or property, without due process of law..."**

4. The Fourteenth Amendment to the United States Constitution reads in relevant part: **"No state shall .... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

5. Federal Rules of Civil Procedure , **CR60 Relief From Judgment or Order, (b) (4) the judgment is void, (5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, (6) for any other reason justifying relief from the operation of the judgment.**

OVERVIEW

Whitcombe's federal District Court Complaint seeks federal relief from an alleged void state lower court judgment, violating citizens rights, the state's highest court refused to address, remedy and finalize.

When Whitcombe's sought state relief, producing all of this information with back up documents in State Court records, the state's lower courts and judges placed five retaliatory sanctions against Whitcombe's, penalizing Whitcombe's for filing their Petitions for Redress of Grievances to be heard. The States highest court refused to address, remedy and finalize the void judgment, left the void judgment allegedly violating citizens rights unabated without finality.

When Whitcombe's turned to the federal courts and judges for federal relief, paying and filing their consolidated state Petitions in a federal Petition to be heard, the court and judges dismissed Whitcombe's Petition without addressing its substance and later in response to Whitcombe's Motion by December 4, 2006 district Court Order threatened to put sanctions against Whitcombe's if Whitcombe's continue to persist demanding their First Amendment Right to Petition to government For Redress of Grievances be heard.

> "To Punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19)

When Whitcombe's appealed to the United States

Court of Appeals For the Ninth Circuit; (1) to the Judicial Council, (2) for a Writ of Mandamus, (3) a formal appeal by Appellant's Informal Brief, (4) Appellant's Supplemental Opening Brief, (5) as a Petition for en banc rehearing. All of Whitcombe's efforts came and went with no federal Judiciary Branch of government help, as if there being no Constitutional issue and violation at stake here.

In the United State States, Citizens right to petition is guaranteed by the First Amendment to the Constitution, and it specifically prohibits Congress from abridging "the right of the people... to petition to Government for redress of grievances ." More specifically, the right to petition is the freedom of individuals to petition their government for a correction or repair of some form of injustice without fear of government retaliating.

A government that does not address the substance in Citizens Petitions for Redress of Grievances but know by reading it is disclosing alleged government wrongs, dismissing and putting sanctions is not listening. A government that does not listen can not care.

PROCEDURAL HISTORY OF THE FEDERAL WHITCOMBE V HENAK CASE

Whitcombe's federal case, Whitcombea v Henaks, was brought under the US Fourteenth Amendment Due Process and Equal Protection of the law jurisdictionally pursuant to 28 USC 1331, 1332 and 1343, in an independent and original action Motion pursuant to Federal Rules of Civil Procedure CR60 Relief From Judgment or Order, (b) (4) the judgment is void, requiring federal district court and judges have a

mandatory non-discretionary duty to vacate void judgments, (b) (5) vacate judgments based upon void judgment and (b) (6) provide relief from the operation of the void not covered in (4) and (5) effecting citizens rights. The Motion is also supplemented as cited by numerous other laws within the Complaint. (See in Appendix.)

February 21, 2006 District Court ORDER striking Plaintiff's CR60 Motion Complaint.

March 20, 2006 District Court ORDER denying Plaintiff's Motion For Reconsideration

April 12, 2006 District Court ORDER and JUDGMENT Dismissing Plaintiff's Original CR60 Motion Complaint and Refiled CR 60 Motion Complaint .

June 28, 2006, District Court ORDER, denying Plaintiffs'; Amended Motion For Relief From Judgment, Motion For Reconsideration, and Motion to Refile Rule 60 Motion.

September 29, 2006, The Judicial Council For The Ninth Circuit dismissed Whitcombe's Complaint the district court presiding and chief judge refuse to perform their duties pursuant to Federal Rules of Civil Procedure CR 60 Relief From Judgment or Order, (b) (4) the judgment is void, requiring federal district courts and judges have a mandatory non - discretionary duty to vacate void judgment (b) (5) vacate judgments based upon the void judgment, and (b) (6) provide relief from the operation of the judgment not covered in (b) (4) and (5).

October 19, 2006 the Court of Appeals rendered an ORDER denying Whitcombe's Writ of Mandamus requesting the district court perform its Federal Rules of Civil Procedure CR 60 Relief From Judgment or Order, (b) (4) the judgment is void, requiring federal district courts and judges have a mandatory non - discretionary duty to vacate void judgment (b) (5) vacate judgments based jupon the void judgment, and (b) (6) provide relief from the operation of the judgment not covered in (b) (4) and (5).

December 4, 2006 the district court Order, dismissing Whitcombe's Motion to vacate the District Courts Judgment against Whitcombe's, threatening to put sanctions against Whitcombe's if they continue to persist demanding their Citizens First Amendment Rights to Petition For Redress of Grievances of government wrongs to the Court.

January 18, 2007, The Judicial Council For the Ninth Circuit rendered an Order affirming the Chief Judges dismissal of Whitcombe's earlier Judicial Misconduct Complaint.

January 26, 2007 the Court of Appeals rendered an Order extending the time to 02/28/2007 to file a Supplemental Opening Brief in response to the district courts December 4, 2006 Order no later than February 28, 2007.

July 16, 2007 the Court of Appeals unpublished opinion dismissed Whitcombe's appeal.

August 24, 2007 the Court of Appeals for the Ninth Circuit Order before three judge panel denied federal

Pro-Se Plaintiff's petition for rehearing en banc.

REASONS FOR GRANTING THE WRIT.

Petitioner presents four reasons for granting the Writ:
(1) A United States Court of Appeals has decided a question of extreme public importance that has not been, but should be settled by this court;
(2) A United States Court of Appeals has entered a decision that has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power;
(3) A United States Court of Appeals has entered a decision that conflicts with decisions of its own and other United States Courts of Appeal:
(4) A United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

1. THE FOLLOWING ARE FIRST IMPRESSION QUESTIONS OF EXTREME PUBLIC IMPORTANCE

Federal Question # 2, Federal Court Rules of Civil Procedure - "govern the procedure in the United States district court in all suits of civil nature..." Federal Rules of Civil Procedure, Rule 1. If the Court of Appeals Memorandum stands, that the Rooker - Feldman Doctrine recognizes federal district courts do not have jurisdiction to comply with Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order, then the Rooker - Feldman Doctrine governs the civil procedure in the United States district courts, which is not Congressionally approved and is without jurisdiction.

2. THIS COURTS SUPERVISORY POWER IS REQUIRED.

FEDERAL QUESTION # 1 Question Arizona federal district court's local rule 7.2 (e) **Length of Motions and Memoranda.,** is vague to Pro - Se Plaintiff's

> "Unless otherwise permitted by the Court, a motion including its supporting memorandum, and the response, including its supporting memorandum, each shall not exceed seventeen (17) pages, **exclusive of attachments and any required statement of facts.** ..." (Emphasis added)

The district courts March 20, 2006 Order, correctly identifies the problem,

> "Pending is Plaintiff's Motion For Reconsideration, filed on February 28, 2006. Plaintiffs seek reconsideration of the Court's Order of February 21, 2006, in which it ordered Plaintiff's previous Motion for Reconsideration stricken because at seventy pages long, it far exceeds the seventeen page limit under local rules. Plaintiff's argue that the Court erred, because pages ten through seventy seven contain a "statement of facts" that are excluded by Local Rule 7.2(e), which provides that "a motion including its supporting memorandum...shall not exceed seventeen pages, exclusive of attachments and ***any required statement of facts***...." (emphasis added). As the language suggests, this rule only excludes ***required*** statement of facts, such as those submitted a motion for summary judgment pursuant to local Rule 56.1." p.1. (Emphasis added by Whitcombe's in quote)

As stated in Whitcombe's Plaintiff's Motion for

Reconsideration dated February 27, 2006, on the issue raised is two fold. (1) How does any human with common intelligence, including professional attorney's who have not had the experience of having to comply with local CR 7.2 (e) know what the rule "suggests" ? Should not the rule state what the court suggests the language implies ?

(2) Whitcombe's allegations in their federal complaint consist of multiple counts of fraud, extortion and conspiracy. By the nature of Whitcombe's federal Complaint, their Complaint and Motion is required to be in compliance with, "Federal Civil Rule 9 Pleading Special Matters. (b) Fraud, Mistake, Conditions of Mind. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent and other condition of mind of a person may be averred generally."

For this reason Whitcombe's thought a statement of facts were required.

Pertaining to Federal Questions # 2, as Whitcombe's point out in the following section, the Ninth Circuit is inconsistent with its own interpretation of the Rooker - Feldman Doctrine in their Eric Noel v Brian C. Hall; Brenda A. Hall No. 00-35988 CV-99-00649-DCA Opinion let alone in conflict with other Circuit Court Opinions.

3. THE COURT OF APPEALS FOR THE NINTH CIRCUIT DECISION CONFLICTS WITH OTHER CIRCUIT COURT DECISIONS.

Federal Question # 1 - The Plaintiff's civil rights pleading was 150 pages long and described by federal

judge as "inept". Nevertheless, it was held "where a plaintiff pleads pro-se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities." Pickering v Pennsylvania Railway, 151 F .2d 240, Third Circuit of Appeals.

Federal Question # 2 - The Rooker - Feldman Doctrine application by the Ninth Circuit preventing District Courts having jurisdiction to follow Federal Court Rules of Civil Procedure CR60 Relief From Judgment or Order (b) (4) the judgment is void, requiring district courts and judges have a mandatory non-discretionary duty to vacate void judgments, (5) vacate void judgments based upon the void Judgment, (6) provide relief for any other reason justifying relief from the operation of the judgment, conflicts with its own interpretation of the Doctrine. "[Because the judgment was not void, the state court's alleged constitutional errors could be corrected only "in an appropriate and timely appellate proceeding." "Since the jurisdiction of the district court is "strictly original "..." Rooker, 263 U.S at 415] Eric Noelv. Brian C. Hall No. 00-35988 D.C. No. CV-99-00649 - DCA Opinion, p. 12593 For Publication United States Court of Appeals For the Ninth Circuit.

(Federal Plaintiff's case alleges a state void judgment and is seeking federal remedy from an independent and original CR60 action.)
In Verizon Maryland Inc. v Public Service Commission, 535 U.S. 635, 644 n.3 (2002) it held that Rooker-Feldman does not apply to a suit in which review is sought in federal district court of "executive action, including determinations made by a state administrative agency." ibid. P. 12598

(Federal Plaintiffs case alleges pursuant to CR60 (b) (6), the void judgment is procured by state agency action and is reviewable pursuant to 5 USC 702 Right of review. p.3.)

Federal Plaintiff's Complaint cites several federal case laws vacating state void judgments without Rooker-Feldman intervention ; "A void Judgment entered by a court which lacks jurisdiction over subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided the party is properly before the court." Long v Shorebank Development Corp., 182 F. 3rd 548 (C.A. 7 111.1999)

"Where CR60 (b) (4) is properly invoked on the basis that the underlining judgment is void, "relief is not a discretionary matter, it is mandatory." Orner v Shala, 30 F. 3d 1307, 1310 (10th Cir. 1994) (quoting V.T.A. Inc. v Airco, Inc., 597 F. 2d 220, 224 n.8 (10th Cir. 1979)

"There is no question of discretion on the part of the court when a motion is under Rule (b) (4) .....either a judgment is void or it is valid." 11 Wright & Miller, Federal Practice and Procedure - Civil * 2862, quoted in Olle v Henry & Wright Corp., 910 F 2d 357, 364 (6th Cir. 1990) accord Combs v Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987) "A party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf, he is entitled to have the judgment treated for what it is, a legal nullity." Combs v. Nick Garin Trucking, 825 F .2d 437, 441- 42 (D.C. Cir. 1987)

4. THE NINTH CIRUIT COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

Federal Question # 1 - the Ninth Circuit has decided federal Pro-se litigants cases will be dismissed on technicalities and that Pro-Se's will be held to the same standards as lawyers. This directly conflicts with, "Pro-se pleadings are to be considered without regard to technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers." Jenkins v McKeithen, 395 U.S. 411, 429 (1959); Pickering v Pennsylvania R. Co., 151 Fed. 2nd 240; Pucket v Cox, 456 2nd 233.

This Court reviews the sufficiency of a pro-se plaintiff's complaint by liberal construction of the pleadings. Haines v. Kerner, 404 U.S. 519, 521 (1972)

Federal Question # 2 - the Ninth Circuit Courts broad interpretation and application of the Rooker - Feldman Doctrine recognizes federal district courts do not have jurisdiction to comply with Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order (b) (4) the Judgment is void, requiring judges have a mandatory non-discretionary duty to vacate void judgments. The Rooker - Feldman Doctrine is not about state void Judgments and Plaintiff's could find no Court Cases that imply it is.

There is no rational Constitutional reason why judges would not vacate void judgments, including their own.

"without authority, its judgments and orders are

regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. Elliot v Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

CONCLUSION

When considering Whitcombe's Writ of Certiorari for discretionary review, please read Whitcombe's federal Complaint found in Attachments A-13. The many exhibits are on file in the federal district court of Phoenix Arizona, waiting to be reviewed or sent to the United States Supreme Court as soon as when and if this honorable court decides which jurisdiction governs who and where hopefully Whitcombe's Complaint will finally be heard.

Its seems Constitutionally rational to Whitcombe's that void judgments must be addressed for what they are - a legal nullity, not subject for review in the United States Supreme Court. This is because void judgments are not legally accepted bona fide judgments that are appeal able. As federal case law states there is no merit in reviewing a void judgment whether it be federal or state. Review of a void judgment, that is dead legally, can not revive the void judgment to be legally effective when it never was.

We hope this Honorable court understands freedom is not free to those who are forced by government intervention to maintain it before they can get it. As Pro-Se victims who are left penny less because of their loss of freedom by government intervention, or for some

other legitimate reason or another can not get Attorney representation in maintaining their Constitutional freedoms Pro-Se's should never-the less not be handicapped by the federal courts and judges requiring Pro-Se's be held to the standards of Attorneys in civil rights issues.

The United States Constitutional First Amendment Right for Citizens to Petition to government for Redress of Grievances and the United States Fifth Amendment Due Process and Equal Protection of the law allows Pro-Se Citizens the right to get in the door of federal courts and receive Due Process and equal protection of the law. That is all that we, the Whitcombe's, Pro Se ask for which is a Constitutional guarantee our State and Federal Government will provide all citizens that right.

For these reasons Federal Pro-Se Plaintiff's encourage this Honorable Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. Thank You.

Dated this 20th day in December, 2007

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